

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ruth D. Kreichauf Confirmation No. 1670
Serial No.: 09/818,383 Examiner: H. Joyce
Filed: March 27, 2001 Group Art Unit: 3749
For: MEANS OF PROVIDING SAFE HAVEN WITHIN BUILDINGS
DURING CHEMICAL OR BIOLOGICAL ATTACK
Docket No.: H16-25961 DIV-2(1004.1136103)

PETITION UNDER 37 CFR § 1.181
TO WITHDRAW FINALITY OF OFFICE ACTION

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Alexandria, VA 22313-1450

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this paper is being electronically transmitted to the United States Patent and Trademark Office on the date shown below.



Lynn Thompson

February 7, 2006

Date

Applicants hereby petition the Commissioner for withdrawal of the finality of the Office Action mailed December 7, 2005. The facts are as follows.

In response to the final Office Action mailed July 14, 2005, Applicants filed a RCE with an amendment on October 14, 2005. New claims 37 and 38 were added but no previously presented claims were amended. The subject matter of new claim 38 was not previously presented.

In the current final Office Action, mailed December 7, 2005, the Examiner rejected new claims 37 and 38 over a combination of references previously cited and a newly cited reference (Holmes). Additionally, the Examiner added a new rejection of

previously presented claims 26-36 over the newly cited Holmes reference. Claims 26-36 had not been amended in the amendment presented with the RCE.

MPEP 706.07(h) Request for Continued Examination (RCE) Practice, section VIII states "[t]he action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP § 706.07(b) for making a first action final in a continuing application are met." MPEP 706.07(b) states:

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

and

However, it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

Emphasis added. Applicants submit that the conditions for making an Office Action final after an RCE have not been met, thus the current Office Action was improperly made final.

In the amendment filed with the RCE, Applicants added new claims 37 and 38. The subject matter of new claim 37 is similar to that of original claim 29, but the subject matter of new claim 38 was not previously presented. The Examiner applied a new reference (Holmes) to new claims 37 and 38. All claims presented in the RCE would thus not have been properly finally rejected in the earlier application on the previous grounds and art of record, as is required by MPEP 706.07(b) when a first Office Action is made final. Additionally, the Examiner added new rejections using the newly cited Holmes reference of claims 26-36, which were not amended in the amendment filed with

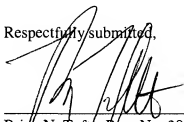
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the RCE. The Examiner's new grounds of rejection were thus not in response to an amendment of the rejected claims.

For the reasons set forth above, Applicants respectfully request the finality of the Office Action be withdrawn and a non final Office Action be issued.

If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 359-9348.

Respectfully submitted,



Date February 7, 2006

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